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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,221	04/22/2004	Kivin Varghese	VAR-2	3220
52447 7590 03/06/2008 PATENTBEST 4600 ADELINE ST., #101 EMERYVILLE, CA 94608			EXAMINER CHIO, TAT CHI	
			ART UNIT 2621	PAPER NUMBER
			MAIL DATE 03/06/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

AK

Office Action Summary	Application No. 10/709,221	Applicant(s) VARGHESE, KIVIN	
	Examiner Tat Chi Chio	Art Unit 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11/30/2007 have been fully considered but they are not persuasive.

The applicant argues that Kikuchi et al. do not teach "identify portions of the recorded audio/visual data of significance to the user."

In response, the examiner respectfully disagrees. Figure 30 of Kikuchi et al. teach that the markers are inputted by the user, and the markers are used to mark sources such as TV broadcast or recorded video (camera recording). The TV broadcast contains TV shows and commercials. The user is able to mark the TV shows that is of significance to him/her. Therefore, Kikuchi et al teach "identify portions of the recorded audio/visual data of significance to the user.

The applicant argues that Kikuchi et al. do not teach "allowing the user to associate at least the marked selected segments of audio/visual data with tag data identifying the content of the marked segments."

In response, the examiner respectfully disagrees. Figure 30 of Kikuchi et al. shows PGC1, PGC2, PGC3,... to identify the order of the content of the marked segments.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 34-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)(discussing patentable weight of data structure limitations in the context of a statutory claim to a data structure stored on a computer readable medium that increases computer efficiency) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claims 34-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory matter as follows. Claims 34-36 define a machine-readable medium embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of descriptive material to be realized"). That is, the scope of the presently claimed a machine-readable medium can range from paper on which the program is written, to a program simply contemplated

and memorized by a person. The examiner suggests amending the claim to embody the program on "computer-readable medium" in order to make the claim statutory. Any amendment to the claim should be commensurate with its corresponding disclosure.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 15-17, 19-24, and 26-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Kikuchi et al. (US 6,553,180 B1).

Consider claims 15 and 34, Kikuchi et al. teach a method of archiving selected segments of recorded audio/visual data, comprising: recording audio/visual data continuously using a recording device (Fig. 30, the user is able to record video continuously with a camera); storing recorded audio/visual data on an interim storage device (50, 30, 49, 48, 32, 34A, and 36 of Fig. 40); allowing a user to mark selected segments of the recorded audio/visual data so as to identify portions of the recorded audio/visual data of significance to the user essentially in real-time without interrupting the recording (Fig. 30, the user is able to mark the TV shows from the TV broadcast or the user is able to mark the scenes that are of significance to him/her in the camera recording.); allowing the user to associate at least the marked selected segments of

audio/visual data with tag data identifying the content of the marked segments (col. 59, line 60-col. 60, line 12); and categorizing the marked selected segments of audio/visual data using the associated tag data (col. 58, line 59-col. 59, line 9).

Consider claim 16, Kikuchi et al. teach the method wherein the user marks selected segments of the recorded audio/visual data while the audio/visual data is stored on the interim storage device (Fig. 30).

Consider claim 17, Kikuchi et al. teach the method further comprising transferring at least the marked selected segments of audio/visual data to archival storage (Fig. 40 shows that the A/V data is stored into a disc).

Consider claim 19, Kikuchi et al. teach the method wherein allowing the user to mark selected segments and allowing the user to associate the marked selected segments with tag data occur when the recorded audio/visual data is stored either on the recording device or on the interim storage device (Fig. 30 shows that marking and tagging occur at the interim storage device).

Consider claim 20, Kikuchi et al. teach the method wherein the recording device is mounted to a stationary point, a mobile point, or a user (Fig. 30, the user is able to carry the camera when he/she records).

Consider claim 21, Kikuchi et al. teach the method wherein the tag data is defined by the user (col. 59, line 60-col. 60, line 12).

Consider claim 22, Kikuchi et al. teach the method further comprising overwriting at least some unmarked segments of audio/visual data when the interim

storage device becomes full (Fig. 40, the user is able to select contents to erase from the DVD-RW and col. 48, line 64-col. 49, line 2).

Consider claim 23, Kikuchi et al. teach the method wherein allowing the user to mark the selected segments of the recorded audio/visual data comprises allowing the user to mark a beginning of each selected segment and an end of each selected segment (Fig. 30 shows that the user is able to mark the beginning and the end of each selected segment).

Consider claim 24, Kikuchi et al. teach a system for archiving selected audio/visual data, comprising: a camera constructed and adapted to record audio/visual data continuously and to transmit the recorded audio/visual data (Fig. 30); a first storage device constructed and adapted to receive the recorded audio/visual data from the camera (50, 30, 49, 48, 32, 34A, and 36 of Fig. 40), the first storage device having a memory module (57 of Fig. 40), a graphical user interface adapted to display the recorded audio/visual data (48 of Fig. 40), and user inputs coupled to the graphical user interface (49 of Fig. 40), the first storage device being further constructed and adapted to allow a user using the user inputs (1) to mark segments of the recorded audio/visual data that are deemed to be significant by the user without interrupting the recording of the camera (Fig. 30, the user is able to mark the TV shows from the TV broadcast or the user is able to mark the scenes that are of significance to him/her in the camera recording), (2) to allow the user to create tag data describing the marked segments (Fig. 60 and Fig. 61), (3) to associate the marked segments with the tag data (col. 59, line 60-col. 60, line 12), and (4) to catalog the marked segments according to the associated

tag data (col. 58, line 59-col. 59, line 9); and an archival storage device constructed and adapted to receive the marked segments of the recorded audio/visual data and to store the marked segments (Fig. 40 shows that the A/V data is stored onto a disc for archival).

Consider claim 26, Kikuchi et al. teach the system wherein the camera is constructed and adapted to transmit the recorded audio/visual data to the first storage device through a wired connection (there is a wire between 42 and 50 of Fig. 40).

Consider claim 27, Kikuchi et al. teach the system wherein the camera is constructed and adapted to be worn by the user (Fig. 30, the user is able to wear the camera when he/she records).

Consider claim 28, Kikuchi et al. teach a method comprising: allowing a user to record audio/visual data continuously using at least one camera (Fig. 30, the user is able to record video continuously with a camera); allowing the user to mark selected segments of the recorded audio/visual data so as to identify portions of the recorded audio/visual data of significance to the user essentially in real-time without interrupting the recording (Fig. 30, the user is able to mark the TV shows from the TV broadcast or the user is able to mark the scenes that are of significance to him/her in the camera recording); allowing the user to associate at least the marked selected segments of audio/visual data with tag data identifying the content of the marked segments (col. 59, line 60-col. 60, line 12); categorizing the marked selected segments of audio/visual data using the associated tag data (col. 58, line 59-col. 59, line 9); archiving at least the marked selected segments (Fig. 40 shows that the A/V data is stored onto a disc for

archival); selectively erasing at least some unmarked recorded audio/visual data (Fig. 40, the user is able to select contents to erase from the DVD-RW); and continuing the method for an essentially indeterminate period of time without terminating recording (Fig. 30).

Consider claim 29, Kikuchi et al. teach the method further comprising mounting the at least one camera on the user (Fig. 30, the user is able to carry the camera when he/she records).

Consider claim 30, Kikuchi et al. teach the method wherein the recorded audio/visual data comprise portions of the user's life (Fig. 30, the user is able to use the camera to record his/her life), and the marked selected segments of audio/visual data comprise portions of the user's life deemed to be significant by the user (Fig. 30, when the recording is about the user's life, the user is able to mark the portions that he/she deems to be significant).

Consider claim 31, Kikuchi et al. teach the method further comprising transferring the recorded audio/visual data to an interim storage device prior to allowing the user to mark selected segments (Fig. 30 shows that the marking occurs in the interim storage device).

Consider claim 32, Kikuchi et al. teach the method further comprising transferring the marked selected segments to an archival storage device for archiving the selected segments (Fig. 40 shows that the A/V data is stored onto a disc for archival).

Consider claim 33, Kikuchi et al. teach the method wherein selectively erasing at least some unmarked recorded audio/visual data comprises overwriting a portion of the unmarked recorded audio/visual data to allow sufficient storage space for the marked, selected segments (col. 48, line 64-col. 49, line 2).

Consider claim 35, Kikuchi et al. teach the machine-readable medium wherein the machine-readable instruction are further interoperable with one or more machines to manage storage space available on the one or more machines so as to transfer at least the marked, selected segments of recorded audio/visual data to archival storage (col. 48, line 64-col. 49, line 2 and Fig. 51).

Consider claim 36, Kikuchi et al. teach the machine-readable medium wherein the machine-readable instructions are further interoperable with one or more machines to manage the selective erasure of recorded audio/visual data that is not marked and selected (col. 48, line 64-col. 49, line 2 and Fig. 51 and Fig. 40, the user is able to select contents to erase from the DVD-RW).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 18 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (US 6,553,180 B1) in view of Tsubaki (US 6,701,058 B1).

Consider claim 18, Kikuchi et al. teach all the limitations in claim 15 but do not explicitly teach the method further comprising transmitting the recorded audio/visual data from the recording device to the interim storage device wirelessly.

Tsubaki teaches the method further comprising transmitting the recorded audio/visual data from the recording device to the interim storage device wirelessly (col. 7, lines 6-12). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to transmit data from the recording device to the interim storage device wirelessly to provide user with more convenience.

Consider claim 25, Tsubaki further teaches the system wherein the camera is constructed and adapted to transmit the recorded audio/visual data to the first storage device wirelessly (col. 7, lines 6-12).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Application/Control Number:
10/709,221
Art Unit: 2621

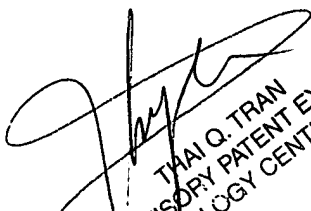
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tat Chi Chio whose telephone number is (571) 272-9563. The examiner can normally be reached on Monday - Thursday 8:30 AM-6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on (571)-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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